

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition of Franklin W. Olin College of Engineering

)
)
)
D.T.E. 01-95

**FRANKLIN W. OLIN COLLEGE OF ENGINEERING'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Petitioner Franklin W. Olin College of Engineering ("Olin") hereby respectfully submits its proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Franklin W. Olin College of Engineering ("Olin") is a not-for-profit institution of higher learning that was chartered by the Commonwealth of Massachusetts in 1997 and that began providing an initial class of 30 students with full-scholarship educations in engineering and entrepreneurship, valued at approximately \$130,000 in today's dollars, in the fall of 2001. Exh. OC-1, ¶ 1.

2. Olin is currently constructing the first phase of its permanent campus ("Olin's New Campus") on a 70-acre site on the border between Needham and Wellesley and immediately adjacent to the campus of Babson College ("Babson"). Exh. OC-1, ¶ 1.

3. Olin enjoys a close and collaborative arrangement with Babson, memorialized in part in a document entitled "Collaboration Agreement," whereby, among other things, Olin and Babson plan to have certain joint or shared services, including with respect to electric service, purchase of other goods and services, transportation services, security, maintenance, student registration and record-keeping,

community relations, production of publications and catalogs, financial administration, advisory committees, information systems, and human resources; plan to have certain joint or shared co-curricular activities, including with respect to dining and related food services, health services, career services, library facilities, and athletic programs, including intramural sports; and plan to have certain joint or shared academic activities, including with respect to liberal arts and science appointments, cross-registration in classes, programs in business and engineering, field projects, entrepreneurial studies initiatives, foreign language and international studies opportunities, summer programs, joint or shared faculty appointments, jointly sponsored classes, and curriculum integration. Exh. IR-BE-1-7, Att. BE-1-7C, pp. 3-4; Exh. IR-BE-1-28.

4. Olin and Babson have plans ultimately to house some of these joint functions in buildings that Olin and Babson will jointly own in both Wellesley and Needham. Exh. OC-2, p. 2.

5. The Wellesley Municipal Light Plant (“WMLP”) has provided electric service to the Babson campus since 1920. Exh. WMLP-1, p. 2.

6. Olin purchased all of its real estate from Babson, including the portion of its property known as Lot 2 on which its new campus is being constructed (hereinafter “Lot 2”), most of which real estate, including Lot 2, Olin acquired from Babson on or about March 7, 2000. Exh. IR-BE-1-4, Attachment BE-1-4.

7. Olin also reached agreement with Babson many months before October 31, 2001, and ultimately purchased on October 31, 2001, a parcel of land located in Wellesley (“Parcel A”), which real estate is a possible, but not the preferred, location

for Olin's switchgear in the event it is permitted to take permanent service from WMLP. Exh. OC-2, pp. 8-9.

8. In addition to the real estate that Olin owns in Needham and Wellesley, Olin owns utility easement rights and access easement rights with respect to approximately 60,000 square feet of Babson-owned real estate in Wellesley. Exh. IR-BE-1-7 and Attachments BE-1-7B1 and BE-1-7B2; Exh. IR-BE-1-18.

9. In the event Olin is permitted to take permanent service from WMLP, Olin will obtain additional property interests from Babson in order to site its switchgear on Babson's campus in Wellesley and to construct and maintain the facilities necessary to carry the electricity across Babson's campus in Wellesley to Lot 2. Exh. OC-2, p. 8.

10. Both before and after Babson transferred Lot 2 to Olin, Babson's real property straddled the Wellesley-Needham border. Exh. WMLP-1, pp. 2-4.

11. Before Babson transferred Lot 2 to Olin, Lot 2 was part of the Babson campus. Exh. IR-BE-1-4, Attachment BE-1-4; Exh. WMLP-2, Exh. 1.

12. Before Babson transferred Lot 2 to Olin, Lot 2 was part of a strip of Babson-owned real estate located in Needham that, like Babson's property in Wellesley, received electric service from WMLP. Exh. WMLP-1, pp. 2-4; Exh. WMLP-2, Exh. 1 (attached to Olin's Brief as Attachment A).

13. Specifically, before Babson transferred Lot 2 to Olin, and from a time prior to 1997, WMLP electricity powered lights located along a Babson-owned way known as Map Hill Drive, including a portion of Map Hill Drive that was located on

Lot 2, and WMLP electricity powered security lights located in a Babson-owned parking lot that straddled the Wellesley-Needham border and part of which was located on Lot 2. Exh. WMLP-1, pp. 2-4; Exh. WMLP-2, Exh. 1; Tr 2: 237; Tr. 3: 288-89.

14. Similarly, before Babson transferred Lot 2 to Olin, and from a time prior to 1997, WMLP electricity powered security lights in another Babson-owned parking lot immediately adjacent to Lot 2, most of which is located in Needham (the “Trim Parking Lot”), and WMLP electricity further provided power to three Babson buildings immediately located on the other side of the Trim Parking Lot, two of which buildings are located entirely within Needham and approximately half of the third of which buildings is located in Needham. Exh. WMLP-1, pp. 2-4; Exh. WMLP-2, Exh. 1; Tr. 3: 300.

15. WMLP electricity continues to provide power to the two-and-a-half Babson buildings and the Trim Parking Lot which, together with Lot 2, form a strip in Needham along the Wellesley-Needham border and contiguous with the portion of the Babson campus located in Wellesley. Id.

16. The Boston Edison Company (“BECO”) has never provided electricity to Lot 2, to the Trim Parking Lot, or to the two-and-a-half Babson buildings located in Needham. Exh. WMLP-1, pp. 2-4; Exh. WMLP-2, Exh. 1; Tr. 4: 570, 573-76, 600-01.

17. Typical of the close collaboration and unique relationship between Olin and Babson, Babson permitted Olin to begin construction of its new campus on Lot 2 before title passed from Babson to Olin, and permitted Babson’s WMLP electric service

to be extended to Lot 2 on a temporary basis at a time prior to the transfer of Lot 2 to Olin. Exh. OC-2, p. 18.

18. Olin is currently constructing four buildings on Lot 2, one of which buildings is located on the precise spot that a portion of Map Hill Drive, including WMLP lighting, was located before that portion of Map Hill Drive was relocated to facilitate construction, and another of which buildings is located immediately adjacent to the spot on Lot 2 that the Needham portion of the Babson parking lot occupied before it was removed for the same purpose, as well as on the very spot that one of the poles for the WMLP security lighting was located. Exh. WMLP-2, Exh. 1 (Attached to Olin's Brief as Attachment A); Exh. OC-6; Tr. 4: 573-76.

19. WMLP already has in place an underground circuit – Line 1511 – that currently is dedicated to the normal supply of electricity to Babson and that would be used to provide the normal supply of electricity to Olin as well. Exh. WMLP-1, p. 9; Exh. WMLP-7, pp. 3-4; Tr. 3: 322-24; Exh. IR-BE-2-22.

20. WMLP already has in place a partially overhead and partially underground circuit – Line 1531 – that currently provides a back-up supply of electricity to Babson and that would be used to provide back-up electricity for Olin as well. Tr. 3: 322-23.

21. WMLP's estimated cost of construction for connection Olin to WMLP's distribution system is approximately \$18,000. Exh. IR-BE-8-3.

22. Underground circuits are inherently more reliable than overhead circuits because they are not vulnerable to outages caused by events such as severe storms and vehicular accidents. Exh. BE-ARJ-1, p. 9; Tr. 4, p. 617.

23. BECo does not currently have in place an underground circuit that could be used to provide electrical service to Olin. Exh. BE-ARJ-1, p. 11; Exh. IR-OC-1-10, Attachment OC-1-10, pp. 2, 6 (depicting construction of new underground circuit).

24. BECo has proposed to Olin only one alternative – Option 1B – that is comparable to the service available from WMLP in the sense that it contemplates a wholly-underground circuit to provide normal service. Exh. BE-ARJ-1, pp. 9-13.

25. BECo's estimated cost of construction for Option 1B is \$1.6 million. Exh. BE-ARJ-1, p. 11; Exh. IR-OC-1-10, Attachment OC-1-10, pp. 2, 6.

26. Because BECo anticipates that the facilities constructed for Option 1B would be used to serve Olin only, Olin would be responsible for the \$1.6 million in construction costs. Exh. IR-OC-1-11; Tr. 6: 875-76.

27. While Olin might be eligible for a "revenue credit" from BECo against the \$1.6 million in construction costs, the maximum revenue credit would be \$644,000, assuming that the maximum estimated load for Olin of 4 MW is realized; but given that Olin anticipates that initially its electric consumption will be only around 40% of its ultimate maximum load, and given that BECo informed Olin during discussions that the revenue credit would be calculated based on consumption at the end of the first year, or possibly the second year, the revenue credit might well be as low as \$240,000, if that. Exh. OC-2, p. 12.

28. BECo has estimated that it would take approximately 75 weeks just to construct the new underground circuit for Olin's normal service under Option 1B. Exh. IR-OC-1-12.

29. BECo's estimate of \$1.6 million in construction costs and WMLP's estimate of \$18,000 in construction costs for a dedicated underground normal service for Olin are costs only to bring service from each utility to the private property line – in the case of BECo, to Olin's property line in Needham, and in the case of WMLP, to Babson's property line in Wellesley. Exh. OC-2, p. 10.

30. The cost of facilities to carry the electricity over private property to Olin's electrical load center would be borne by Olin and would be approximately \$140,000 less if Olin takes service from WMLP than if Olin takes service from BECo. Exh. OC-2, pp. 9-11.

31. If Olin takes service from WMLP, it will be able to realize synergies with Babson that would not be possible if Olin takes service from BECo, such as: sharing common manholes with Babson; sharing conduit duct bank with Babson; and saving on ongoing maintenance by locating the Olin switchgear in the same location on Babson's campus in Wellesley as the Babson switchgear. Exh. OC-2, p.8.

32. WMLP has not had an outage in the Babson service area, which is the same area in which Olin would be served, for at least the last seven years. Exh. WMLP-1, p. 8.

33. Olin owns some buildings on lots separate from Lot 2 and located mainly along Great Plain Avenue in Needham that are being used temporarily for administrative purposes and that receive service from BECo. Exh. OC-1, ¶ 3.

34. Olin has experienced numerous problems with the electrical service it has received from BECo in these buildings, including several total power outages for periods of more than one-half hour; constantly flickering lights; and high and low voltage spikes outside the range of acceptability. Exh. OC-1, ¶ 3.

35. BECo's response to Olin's complaints regarding its service from BECo was inadequate: despite the fact that Olin began complaining in November 1999 and BECo promised at least as early as March 2000 to research the issue and install a monitoring device, BECo took no steps to research the issue until October 2000, took remedial steps in November 2000 that did not fix the problems, and never installed the monitoring equipment. Exh. OC-2, pp. 3-4 and Attachment A, pp. 3-4 (emails dated 3/15/00 and 3/31/00); Exh. IR-OC-1-6, Attachment IR-OC-1-6, p. 21 (letter dated 7/10/00), Issues Profile Report pp.5-7.

36. The BECo service to these temporary administrative buildings originates at BECo Station 148 in Needham. Exh. BE-ARJ-1, pp. 13-14.

37. BECo Station 148 has been plagued by voltage regulation problems for the past several years. Exh. WMLP-1, pp. 8-9.

38. BECo Station 148 is the station that would provide power for both Olin's normal supply and Olin's back-up supply if BECo were to provide service to Olin. Exh. BE-ARJ-1, p. 9.

39. By contrast, if WMLP provides service, power for both Olin's normal supply and Olin's back-up supply will originate at BECo Station 292, which does not have the voltage regulation problems experienced at Station 148. Tr. 3: 336.

40. Because WMLP's rates are significantly lower than BECo's rates, Olin would realize significant ongoing energy savings if permitted to take electrical service from WMLP. Exh. IR-BE-1-8C Supp. Att., pp. 1-7; Exh. IR-BE-2, Exh. 2, pp. 24-25.

CONCLUSIONS OF LAW

1. Given that WMLP, and not BECo, is the only distribution company that has ever provided electricity to Lot 2, Lot 2 is not within BECo's exclusive service territory. See Massachusetts Electric Company, D.T.E. 98-122, p. 7 (2002)(municipal boundaries do not necessarily determine service territories); G.L. c. 164, § 1B(a)(Department to define service area based on service territories actually served on July 1, 1997).

2. Lot 2 is within WMLP's exclusive service territory. Id.

3. Even if Lot 2 is not within WMLP's exclusive service territory, facts and fairness warrant the exercise of the Department's discretion to depart from strict municipal boundaries and to permit Olin to choose its service provider. D.T.E. 98-122, p. 7.

4. Among the facts warranting the Department's exercise of discretion in favor of permitting Olin to choose its provider are: (1) the fact that Olin's up-front costs for connecting to a dedicated underground circuit from WMLP would be over \$1

million less than the cost of connecting to a dedicated underground circuit from BECo; (2) the fact that a dedicated underground service is already available from WMLP but would take BECo well over a year to construct; (3) the fact that service from WMLP would be more reliable than service from BECo; and (4) the fact that Olin could realize further cost savings through synergies with Babson if it takes service from WMLP. See id.

5. Additional facts warranting the Department's exercise of discretion in favor of allowing Olin to choose service from Babson include: (1) the fact that WMLP has provided electric service to Babson for over 80 years; (2) the fact that WMLP has done so even with respect to a strip of property that Babson owns or owned in Needham just across the border between Wellesley and Needham; (3) the fact that part of said strip of property included Lot 2, before Babson transferred it to Olin; (4) the fact that, had Babson retained ownership of Lot 2 and constructed buildings thereon, BECo plainly would not have complained of electric service to those buildings being provided by WMLP; (4) the fact that, while distinct legal entities, Olin and Babson collaborate and share resources in pursuing their shared mission of providing high-quality education that their identities blur in many respects, even to the point where Babson permitted Olin to begin construction of its new buildings on Lot 2 well before title had even passed from Babson to Olin; (5) the fact that Babson has already granted Olin significant property rights in Wellesley, including utility and access easements with respect to 60,000 square feet of land in Wellesley, and would provide additional property rights to enable Olin to site its switchgear and install and maintain facilities to

carry electricity across Babson's land in Wellesley to Olin's campus; and (5) the fact that the significant savings Olin would realize in taking service from WMLP would be available for purposes of Olin's central mission, namely, to provide a high-quality education in the field of engineering to worthy students on a scholarship basis at little or no cost to the students. Id.

6. An additional factor warranting the exercise of the Department's discretion in favor of permitting Olin to take service from WMLP is the fact that WMLP's rates are much lower than BECo's and Olin accordingly would realize significant, ongoing energy savings if served by WMLP, a fact that, again, would enable Olin to conserve resources and further its central mission of providing a high-quality education in the field of engineering to worthy students on a scholarship basis at little or no cost to the students. Id.

k:\Trl\Rer\Olin-Findings of fact